IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

****

: **ORDER** :

1. S.B. CIVIL WRIT PETITION NO.6999/2003- SMT. BHOLAKI VS. STATE OF RAJASTHAN & ORS.

2. S.B. CIVIL WRIT PETITION NO.1141/2004-UGAMRAJ VS. STATE OF RAJASTHAN & ORS.

3. S.B.CIVIL WRIT PETITION NO.1142/2004-HANUMAN DAS VS. STATE OF RAJASTHAN & ORS.

4. S.B.CIVIL WRIT PETITION NO.1143/2004-SH. JAGDISH VS. STATE OF RAJASTHAN & ORS.

5. S.B.CIVIL WRIT PETITION NO.1144/2004-BANSHILAL VS. STATE OF RAJASTHAN & ORS.

6. S.B.CIVIL WRIT PETITION NO.1145/2004-PUSARAM VS. STATE OF RAJASTHAN & ORS.

7. S.B.CIVIL WRIT PETITION NO.1146/2004-SMT. INDRA VS. STATE OF RAJASTHAN & ORS.

8. S.B.CIVIL WRIT PETITION NO.1147/2004-NAZIR MOHD. VS. STATE OF RAJASTHAN & ORS.

UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA

Date of Order : 18th March, 2005

REPORTABLE

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.Vineet Kothari, for the petitioner.
Mr.L.R.Upadhayay,Dy.GA, for the respondents.

BY THE COURT:

In all these writ petitions, common point is involved and therefore, they are being disposed of by this common judgment and for convenient disposal of these writ petitions, facts of S.B.Civil Writ Petition no.6999/2003 are taken.

The facts in nut-shell are that the petitioner applied for grant of permit to ply his vehicle on public road for which petitioner submitted an application under Rule 5.5 of the Rajasthan Motor Vehicles Rule, 1990. The permit was granted to the petitioner treating the route in question as falling in the category 'A' as described in the explanation (1) appended to sub-rule (3) of Rule 5.5 of the Rules of 1990. The petitioner was granted permit in the various years, much before the year 2002. According to petitioner, the petitioner came to know that the route in question was falling in the category 'C', when he noticed the order of the State Government dated 2nd May, 2002 (Annex.1). When petitioner came to know about the above order of the State

Government dated 2nd May, 2002, he submitted an application for rebate in the tax and requested that since the route in question was falling in the category 'C' and petitioner paid the tax treating the route as category 'A', therefore, the petitioner, who was entitled for the rebate to the extent of 20%, is now seeking the relief of that rebate and requested that the amount may be either refunded or it may be adjusted towards the tax liability of the petitioner in future years. According to petitioner, the refund and adjustment is permissible under Rule 26 of the Rajasthan Motor Vehicles Tax Rule, 1951, which provides that if the taxation officer satisfied with the payment of tax made by the owner of the vehicle is in excess of the tax due then the taxation officer is required to pass an order for refund of the amount and for that purpose he is required to issue a refund order in form MTK. The proviso appended to sub-rule (1) of Rule 26 of Rules of 1951 provides that if owner desires the adjustment against any amount payment by him, the taxation officer shall issue the adjustment order on his application in form MTF. The petitioner's application for the above benefit in the tax and consequently refund of the tax was rejected by the District Transport Officer and Taxation Officer, Pali vide order dated 28th July, 2003. According to petitioner, the said order was passed by the DTO, Pali without giving an opportunity of hearing to the petitioner.

The petitioner aggrieved against the above order, preferred appeal before the Regional Transport Officer, Pali. He too, rejected the petitioner's prayer and dismissed the appeal by order dated 23.10.203 (Annex.7). The petitioner, therefore, preferred the present writ petition.

According to petitioner from the office of the Regional Transport Authority, Pali, a recommendation was forwarded to the Dy. Secretary, Transport, Government of Rajasthan on 14th March, 2002 (Annex.12). By this communication, the Secretary, Regional Transport Authority requested that the routes mentioned in the Annex.12 are presently shown in the category 'C', but they are required to be now included in the category 'A'. The petitioner's vehicles are plying on the route/routes mentioned in the Annex.12 dated 14th March, 2003. According to petitioner, in the Annex.12 dated 14th March, 2003 itself it is clearly mentioned that all the routes referred are in the category 'C' and it is also mentioned that after survey, the authority found that the routes are covered under the category 'A', therefore, “now”, the routes referred in Annex.12 may be recorded in the category 'A'. The above recommendation was accepted by the State Government and an order was issued by the Dy. Secretary, Government of Rajasthan on 2nd May,

2002 and it has been declared in the said order that “now”, the routes referred in Annex.12 as well as in Annex.1 dated 2nd May, 2002 passed by the State Government shall be converted into category 'A'. The petitioner also placed on record the copy of the order of the State Government dated 29th Oct., 2002 (Annex.9) by which the Regional Transport Officer was directed to re-survey the area and forward the proposal for final orders. However, in this communication dated 29th Oct., 2002 it is clearly mentioned that the order dated 2nd May, 2002 converting the routes from category 'C' to 'A' has not been stayed.

In view of the above, according to learned counsel for the petitioner, if the petitioner has paid the tax amount and did not claim the rebate for which he was entitled that was done under wrong assumption of fact and the authority also assumed a wrong fact and, therefore, it is a case of proceedings by both the parties on wrong assumption of fact. However, it is also submitted that looking to the facts of the case, the plea of estoppal is also not available to the respondents, particularly, in view of the fact that respondents themselves have corrected their record also only in the year 2002. According to learned counsel for the petitioner since the very foundation of the order of the appellate authority is the order passed by the Taxation Officer and that has been passed without giving

opportunity of hearing to the petitioner, therefore, the order dated 27th July, 2003 passed by the District Transport Officer Cum Taxation Officer, Pali and any order passed thereafter deserve to be set aside. It is also submitted that in view of the admitted case it is clear from the Anex.12 and Annex.1, the respondents may be directed to treat the route in question as falling in the category 'C' upto 2nd May, 2002 and further direction may be issued to authorities to either refund or adjust the amount for which the petitioner is entitled.

Learned counsel for the respondent-State vehemently submitted that the order Annex.12 dated 2nd May, 2002 is only an order to correct the record and has no relevance to the facts of the present case. According to learned counsel for the respondent-State,the petitioner himself applied for the route and he was granted permit for the route 'A'. According to learned counsel for the respondent-State as per rule 43 of the Rules of 1951, the every Taxation Officer is required to issue a certificate that the route has been inspected by him personally and that he is satisfied with the route comes in the category of that class route. Unless such certificate is given, the route is required to be treated as route falling in the category 'A'. No such such certificate was ever demanded by the petitioner nor issued by the taxation officer, therefore, the petitioner cannot say that the route in question was

falling in the category 'C' till 2nd May, 2002.

I considered the submissions of learned counsel for the parties and perused the record. It will be worthwhile to mention here that for obtaining a permit to ply the vehicle on public road, one is required to apply under the Rajasthan Motor Vehicles Rules, 1990 by submitting an application as provided under rule 5.5. The relevant portion of sub-rule (1), (2) and (3) alongwith explanation (1) and (2) of rule 5.5. are as under: -

> **"5.5. Application for Grant of Permit.-**(1) Every application for a permit in respect of Transport Vehicle shall be in one of the following forms, namely: -
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> (i) In respect of a particular Stage Carriage in Form R.S.5.1;
> (ii) In respect of service of Stage Carriage in Form R.S. 5.2;
> (iii) In respect of a particular Contract Carriage in Form R.S. 5.3;
> (iv) In respect of a Casual Contract Carriage in Form R.S. 5.4;
> (v) In respect of a Contract Carriage to be used for Private hire in Form R.S. 5.5;
> (vi) In respect of a Private Service Vehicle in Form R.S. 5.6;
> (vii) In respect of Goods Vehicle in Form R.S. 5.7;
> (viii) In respect of All India Permit u/s 88(8)-in Form prescribed by the Central Government.
> (ix) In respect of National Permit u/s 88(9) in Form prescribed by the Central Government; and
> (x) In respect of temporary permit in Form R.S. 5.8
>
> (2) The application alongwith a passport size photograph of applicant affixed thereon and three additional photographs, which shall be used for affixing on permit register, and on permit part 'A' and 'B' shall be addressed to the State Transport Authority or the Regional Transport Authority, as the case may be, and submitted in the office of the Secretary/Executive Officer and accompanied by-

(i) poof of residence in the manners mentioned in rule 4 of the Central Motor Vehicles Rules, 1989;
(ii) proof regarding belonging to S.C. Or S.T. from a competent authority. Where reservation of permit under sub-section (4) of Section 71;
(iii) A self-addressed envelope for intimation;
(iv) Prescribed fee;

(3) In case of a stage carriage permit.-The application shall also be accompanied by:-

(a) Blue print of the proposed route showing all via-villages/town/cities with population.
(b) Length class or classes of the proposed routes i.e A,B,C.

Explanation I.- for the purpose of this sub-rule A class route means:

A route cemented, tarred, asphalted or metalled.
B class route means Gravelled or Kankar route.
C class route means all Tracks and Fair whether and other routes not included in 'A' and 'B' class routes.

Explanation II.- Duly verified by competent authority of P.W.D. Of Tehsildar of the concerned district.

In case the applicant does not give the proof regarding length of route than the Regional Transport Officer shall have a survey report regarding length and nature of the route from the District Transport Officer concerned."

The authority is required to consider the application and, thereafter, may issue permit for plying the vehicle on road. It is clear from sub-rule (2) of rule 5.5 that the applicant is required to submit application and he is also required to submit certain proof alongwith the application as provided under sub-clause (i) to (iv) of sub-rule (2) because of clause (b) of sub-rule (3) of rule 5.5, the applicant is also

required to disclose the length class or classes of proposed routes, i.e., A,B, & C. The applicant is further required to submit a blue print of the proposed route showing all via-villages/towns/cities with population as provided under clause (a) of sub-rule (3) of rule 5.5. As per explanation II,the documents are required to be submitted and verified by the competent authority of the PWD or Tehsildar of the concerned District. The second proviso also provides that in case the applicant does not give the proof regarding length of the route then the Regional Transport Officer shall have a survey report regarding length and nature of the route from the DTO concerned. In addition to above, as referred above, rule 43 of the Rules of 1951 provides issuance of certificate by the Taxation Officer for the class of route 'C".

It appears from the orders passed by the District Transport and Taxation Officer, Pali dated 28th July, 2003 that the said authority rejected the prayer on two counts and one is that in the order dated 2nd May, 2002, no direction has been issued for adjustment or refund of the tax and second is that the owner of the vehicle himself deposited the tax treating the route as falling in the category 'A' . The said approach of the authority appears to be not well founded in view of the fact that the authority was required to look into the effect of the order dated 2nd May, 2002. The authority also has not examined whether because of

applying in wrong category, one can be denied refund of the tax simply because of that mistake and here in case of mutual mistake and by that mistake, the other party has not suffered any loss or has not acted disadvantageous to its own interest. Apart from above, the authority should have examined whether the excess amount received by the taxing authority can be refunded or not in view of rule 26 of the Rules of 1951, but since there is no speaking order on both points, therefore, apart from the fact that no opportunity of hearing was given to the petitioner, the order deserves to be quashed because of the reasons mentioned above.

The matter was considered by the appellate authority, but it appears from the order of the appellate authority that the appellate authority though referred the order dated 2nd May, 2002, but failed to distinguish how the order dated 2nd May, 2002 is not relevant for the purpose of deciding the issue, which was before the appellate authority. When the State Government after receipt of the report from the Regional Transport officer declared that “now” the routes mentioned in the order of the State Government dated 2nd May, 2002 are “converted into route of category 'A' from category 'C'”. The word “now” (अब) has its own significance as this indicates that before this date, the routes were recorded as falling in the category 'C'. However, it is also relevant

to mention here that since the Regional Transport Authority recommended to change the route from category 'C' to 'A' or 'B', therefore, not only the order has been passed for converting the route from the category 'C' to 'A', but the order has been passed for converting the route from 'C' to 'B' as the case recommended.

The appellate authority though was right in observing that the routes are required to be examined as per the explanation-I appended to the sub-rule (3) of rule 5.5 and also was right in holding that a certificate is required to be issued when the route is falling in class 'C' as provided under rule 43 of the Rules of 1951. It is also not in dispute that the petitioner was granted permit under the category 'A' as he paid the tax, but if the petitioner paid the tax under wrong assumption of fact and there is a provision for refund of the tax under rule 26 of the Rules of 1951 then the appellate authority should have examined this aspect of the matter and should not have dismissed the appeal of the petitioner-appellant only on the ground that he applied in particular category without affording opportunity of hearing to the petitioner to show that he bonafidely applied in particular category, may by believing the view of the authority or believing because of any other reason. The appellate authority could not have discarded all together the order of the State Government dated 2nd May 2002. The petitioner's defence,

which has been put-forward by the respondents before this court that the recommendation of the Regional Transport Authority dated 14th March, 2002 is only a recommendation to correct the record and not to declare the route in particular category, is not the reason given by the appellate authority and no reasons can be supplied by the respondent in the impugned orders, which are not given in the order. It will be worthwhile to mention here that the recommendation dated 14th March, 2002 as recommended by the Regional Transport Authority is not with respect to entire area, but is dealing with specific route and, therefore, it is also a matter, which requires consideration whether a route for which recommendation has been made in the year 2002 by saying that now the routes may be declared to be in category 'A' or 'B' whether they in fact, were already route treated and accepted as falling in category 'A' or 'B' and not in the category 'C' . It appears that all this happened because of the fact that no thorough enquiry was made at first instance on application of the petitioner.

Therefore, all these writ petitions of the petitioner are allowed and the orders passed by the appellate authority dated 23rd Oct., 2003 as well as passed by the District Transport and Taxation Officer, Pali dated 28th July, 2003 are set aside and quashed. The matter is remanded back to the District Transport and Taxation Officer, Pali for

deciding the matter afresh in accordance with law and the rules applicable as well as after carefully considering the application submitted by the petitioner and the documents annexed with it and the recommendation of the District Transport Authority, Pali dated 14th March, 2002 and the order passed by the Government dated 2nd May, 2002. The petitioners are directed to appear before the concerned authority on 30th March, 2005 and the concerned authority shall pass the appropriate order within a period preferably within one month thereafter.

(PRAKASH TATIA), J.

c.p.goyal/-